



Between:

[REDACTED]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the “Commission”) as an appeal against an amended PAYE/USC End of Year Statement (P21) (hereinafter a “Balancing Statement” issued by the Revenue Commissioners (hereinafter the “Respondent”) on 21st December 2017 to the Appellant.
2. The total amount of tax at issue is €3,305.

Background

3. On 18th July 2014 the Appellant advised the Respondent that his entitlement to a medical card had been restored and requested that a new tax credit certificate be issued to him in order that Universal Social Charge (hereinafter “USC”) would be deducted from his pay at the appropriate rate. The Respondent issued a revised tax credit certificate to the Appellant’s employer on 28th July 2014.

4. The P35 end of year return filed by the Appellant's employer for 2014 showed that the Appellant's income for USC purposes was €126,198.10.
5. The Appellant filed an online tax return for the year 2014 on 26th February 2017 which stated that he was in receipt of income from his employment of €88,664.60 for the year 2014.
6. The Respondent disallowed any reduction in USC which had been allowed to the Appellant on foot of his notification that his entitlement to a full medical card had been restored in July 2014 and issued the Amended Balancing Statement to the Appellant on 21st December 2017 which showed an underpayment of USC of €3,305.47 for 2014.
7. The Appellant takes issue with the Amended Balancing Statement which the Respondent issued on 21st December 2017 and in particular with the amount of USC charge contained therein and has appealed same.
8. The oral hearing of this appeal was scheduled for 29th April 2022. The Appellant did not attend the oral hearing and subsequent to the time of the oral hearing the Commission received written notification from the Appellant that he was unable to attend the oral hearing. The Appellant requested that his appeal be reviewed on information previously presented. The Respondent has not objected to this course of action. As a result the within appeal has been determined pursuant to section 949U of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997").

Legislation and Guidelines

9. The legislation relevant to the within appeal is as follows:

Section 531AN of the TCA1997:

“(1) For each tax year an individual shall be charged to universal social charge on his or her aggregate income for the tax year—

(a) at the rate specified in column (2) of Part 1 of the Table to this section corresponding to the part of aggregate income specified in column (1) of Part 1 of that Table where the individual is—

(i) aged under 70 years, or

(ii) aged 70 years or over at any time during the tax year and has aggregate income that exceeds €60,000,

...

(3) Notwithstanding subsection (1) and the Table to this section, where an individual is in receipt of aggregate income which does not exceed €60,000, is aged under 70 years and has full eligibility for services under Part IV of the Health Act 1970, by virtue of sections 45 and 45A of that Act or Council Regulation (EC) No. 883/2004 of 29 April 2004¹, the individual shall, instead of being charged to universal social charge on the part of aggregate income for the tax year concerned that exceeds €16,016 at the rate provided for in column (2) of Part 1 of that Table, be charged on the amount of the excess at the rate of 4 per cent.”

10. The relevant rates of USC set out in the Table to section 541AN of the TCA1997 for 2014 were as follows:

First €10,036	USC rate of 2%
Next €5,980	USC rate of 4%
Balance	USC rate of 7%

Submissions

Appellant's Submissions

11. The Appellant submitted that when the USC came into being there were reduced rates for medical card holders which he suggested might have been done on the basis that all medical cards were granted in an income related basis. He submitted that he is entitled to a full medical card on discretionary grounds as a result of him having Type 1 Diabetes. He stated that his medical card is automatically updated annually without any assessment other than for him to verify that he is still alive and that he resides in Ireland.

12. The Appellant submitted that his tax is deducted from his pay by a payroll company appointed by his employer. He submitted that the payroll company have confirmed that they have always acted on the correct and relevant tax details for him and the tax code in operation at the time of calculation of the monthly taxes/PRSI/USC payable.

Respondent's Submissions

13. The Respondent submitted that section 531AN of the TCA1997 as amended by section 3 of the Finance Act 2013 sets out the rate of USC charge for the year 2014.

14. The Respondent submitted that section 531AN(1)(a)(i) of the TCA1997 provides that the rate for an individual under 70 years of age which is set out in column 2 of the Table to section 531AN of the TCA1997 as being:

First €10,036	USC rate of 2%
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Next €5,980 USC rate of 4%

Balance USC rate of 7%

15. The Respondent submitted that for 2014 section 531AN(3) of the TCA1997 provided that where the individual's income does not exceed €60,000, where the individual is under 70 years of age and where the individual is a holder of a full medical card, USC on income above €16,016 was to be charged at 4%.
16. The Respondent submitted that as the Appellant's income for USC in 2014 was €126,198, section 531AN(3) does not apply to the Appellant.

Material Facts

17. The material facts in the within appeal are not at issue and the Commissioner accepts the following material facts:
- i. The Appellant has full eligibility for services under Part IV of the Health Act 1970, by virtue of sections 45 and 45A of that Act or Council Regulation (EC) No. 883/2004 of 29 April 2004¹, that is to say the Appellant is the holder of a full medical card and was a holder of a full medical card in 2014;
 - ii. The Appellant's income for USC in 2014 was €126,198 as set out in his employer's P35 return for that year.

Analysis

18. As with all appeals before the Commission the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

"This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable."

19. The Commissioner has considered the submissions made on behalf of both Parties along with the relevant legislation and the material facts.
20. In the judgment of the High Court in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (hereinafter "*Perrigo*"), McDonald J., reviewed the most up to date jurisprudence and summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;

(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: “... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that”;

(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;

(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.

(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:

“Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a

tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible”.

21. Section 531AN(3) of the TCA1997 provides as follows:

“(3) Notwithstanding subsection (1) and the Table to this section, where an individual is in receipt of aggregate income which does not exceed €60,000, is aged under 70 years and has full eligibility for services under Part IV of the Health Act 1970, by virtue of sections 45 and 45A of that Act or Council Regulation (EC) No. 883/2004 of 29 April 2004¹, the individual shall, instead of being charged to universal social charge on the part of aggregate income for the tax year concerned that exceeds €16,016 at the rate provided for in column (2) of Part 1 of that Table, be charged on the amount of the excess at the rate of 4 per cent.”

22. The Appellant submits that as a result of him being a holder of a full medical card he is entitled to a reduced rate of USC on his income and that all of his income above €16,016 should be subject to a rate of USC at 4% and not at 7%. On the other hand the Respondent submits that because the Appellant’s income for USC purpose for 2014 was €126,198 he was not entitled to avail of a reduced rate of USC.

23. Having regard to the principles of statutory interpretation affirmed by McDonald J in *Perrigo*, the Commissioner finds that the words of the statutory provision contained in section 531AN(3) of the TCA1997 are plain and their meaning is self-evident. The Commissioner finds that applying the ordinary, basic and natural meaning of the words of that section means that an individual is entitled to a reduced rate of USC where they satisfy all three of the following conditions:

- i. they are entitled to a full medical card; and

- ii. they are under the age of 70; and
- iii. their income does not exceed €60,000.

24. Having considered all of the above the Commissioner finds that for the year 2014 the Appellant was entitled to a full medical card and that he was under the age of 70. The Commissioner further finds that the Appellant's income for 2014 exceeded €60,000.

25. As a result of the above the Commissioner finds that the Appellant was not entitled to avail of the reduced USC rate set out in section 531AN(3) of the TCA1997 as he did not fulfil all three of the criteria set out in section 531AN(3) as his income for 2014 exceeded €60,000.

Determination

26. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in his appeal. It is understandable that the Appellant might be disappointed with the outcome of this appeal. The Appellant was correct to check to see whether his legal rights were correctly applied.

27. This Appeal is determined in accordance with Part 40A of the TCA1997 and in particular, section 949 thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA1997.



Clare O'Driscoll
Appeal Commissioner
9th May 2022